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SPOKANE WA 99201

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SEP 02 2008

In re Application of :  
Morris et al. : DECISION ON PETITION  
Application No. 10/825,859 :  
Filed: April 15, 2004 :  
Atty Docket No. MS1-1976US :

This is a decision on the PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT filed April 4, 2005. This petition was recently forwarded to the undersigned for consideration.

The above-identified application became abandoned for failure to file a reply to the NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION mailed June 28, 2004. This Notice required applicants to submit the statutory basic filing fee, an executed oath or declaration and the late surcharge. This Notice set a two month time limit for reply, with extensions of time obtainable under § 1.136(a). No reply considered timely filed and no extension of time considered obtained, the application became abandoned effective August 29, 2004. A courtesy Notice of Abandonment was mailed on March 18, 2005.

In response, applicants timely filed the instant petition to withdraw the holding of abandonment within 2 months of the mailing of the notice of abandonment. On petition, applicants submit the response to the notice of missing parts filed on July 6, 2006, a copy of the certificate of transmission, and the auto-reply facsimile transmission. In effect, applicants maintain that a reply was timely faxed to the Office on July 6, 2004. The petition does not include a statement by the person who faxed the response.

Nonetheless, petitioner's evidence and arguments have been considered and it is concluded that the requirements of 37 CFR § 1.8(b) have been met. Petitioner has shown to the satisfaction of the Director that the response should be considered timely filed by facsimile transmission on July 6, 2004. The Auto-Reply Facsimile Transmission confirms that a 6-page response was received in the USPTO on July 6, 2004 at 6:26:25 in the evening. The cover sheet itemizes the 6 pages as a fee transmittal, a notice to file missing parts and an executed declaration. Thus, the response was timely and proper.

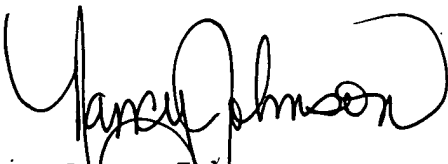
In view thereof, the Notice of Abandonment mailed March 18, 2005 and the holding of abandonment are withdrawn.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

The Office of Patent Application Processing has been advised of this decision. The application file is, thereby, forwarded to the Office of Patent Application Processing to withdraw the holding of abandonment and for processing of the responses to the Notice to File Missing Parts resubmitted on petition filed April 4, 2005.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions